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No. 03-1414

In the Supreme Court of the United States

RONALD A. HAMILTON, PETITIONER

v.

J. D. COLLETT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT JEFFREY RAMIREZ IN OPPOSITION

PAUL D. CLEMENT
Acting Solicitor General
Counsel of Record
PETER D. KEISLER
Assistant Attorney General
SCOTT R. MCINTOSH
SUSHMA SONI
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTIONS PRESENTED

1. Whether, after excluding from the record allegedly perjured testimony, the court of appeals correctly concluded that probable cause existed to arrest and initiate a prosecution of petitioner.

2. Whether a claim of malicious prosecution under state law, standing alone, gives rise to an action under 42 U.S.C. 1983 for a violation of the federal Constitution.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-6a) is not published in the *Federal Reporter*, but it is reprinted in 83 Fed Appx. 634. The opinion of the district court (Pet. App. 25a), adopting the findings and recommendation of the magistrate judge (Pet. App. 7a-24a), is unreported.

JURISDICTION

The court of appeals entered its judgment on December 11, 2003. A petition for rehearing was denied on January 12, 2004 (Pet. App. 27a). The petition for a writ of certiorari was filed on April 9, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1993, petitioner was arrested and charged with money laundering, gambling, and conspiracy. Pet. App. 2a; *United States* v. *Truesdale*, 152 F.3d 443, 445 (5th Cir. 1998). Those charges arose out of his involvement with World Sportsbook, an international sports gambling operation that accepted bets out of offices in the Caribbean and conducted financial transactions related to those bets in Texas. Petitioner operated telephonic information lines out of Texas, which provided potential gamblers with daily predictions on sporting events. He advertised World Sportsbook's gambling operation on his information line. In return, he received 50% of the profits that World Sportsbook derived from the referrals. *Truesdale*, 152 F.3d at 445. In addition, petitioner bonded the funds that his customers wagered with World Sportsbook, collected wire transfers of money made by bettors to establish or replenish their gambling accounts with World Sportsbook, and deposited those gambling funds in Texas bank accounts owned by World Sportsbook's officers. *Id.* at 444-445. Petitioner made payments to his winning customers from those same Texas bank accounts. *Id.* at 445.

A search of the home of the owner of World Sportsbook uncovered multi-line telephones, a bank of televisions, tally sheets reflecting more than $2 million in wagers in a 2-month period, and a shredding machine. *Truesdale*, 152 F.3d at 445. During that search, three callers to the home placed bets with FBI agents. *Id.* at 448. A search of petitioner's home uncovered a tally sheet of bets placed with World Sportsbook that was similar to the sheet found in the home of World Sportsbook's owner. *Ibid.*

2. Based on his involvement with World Sportsbook, petitioner was indicted by a federal grand jury, arrested, and prosecuted for money laundering, in violation of 18 U.S.C. 1956(a)(1)(A)(i) and 1956(a)(1)(B)(i), illegal gambling, in violation of 18 U.S.C. 1084(a) and 1955, and conspiracy, in violation of 18 U.S.C. 2. See Pet. App. 2a. The jury acquitted petitioner of conspiracy, but found him guilty of money laundering and illegal gambling. *Truesdale*, 152 F.3d at 445-446. The court of appeals reversed petitioner's convictions on the ground that the government failed to prove beyond a reasonable doubt that petitioner had committed a predicate gambling offense that violated Texas law. Pet. App. 2a; *Truesdale*, 152 F.3d at 446-450.

Petitioner then sought reimbursement of the attorney's fees he had incurred in the criminal prosecution, pursuant to the Department of Justice Appropriations Act, 1998 (commonly known as the Hyde Amendment), Pub. L. No. 105-119, § 617, 111 Stat. 2519, reprinted in 18 U.S.C. 3006A (Supp. III 1997), alleging that the prosecution was "vexatious, frivolous, or in bad faith." The district court denied the motion on the ground that the prosecution was "substantially justified." *United States* v. *Truesdale*, 211 F.3d 898, 909 (5th Cir. 2000). The Fifth Circuit affirmed that judgment, holding that, while the evidence was insufficient to sustain the convictions, petitioner had "failed to establish even that the government's position was not substantially justified," let alone "vexatious, frivolous, or in bad faith." *Id.* at 910; see also *id.* at 909 (discussing inculpatory evidence in the record, such as the gambling-affiliated telephone lines that terminated at petitioner's home, the payment of winnings from Texas bank accounts, and the notebook containing betting information found in petitioner's home).

3. Petitioner filed a damages action against respondent J.D. Collett, a Dallas police officer, under 42 U.S.C. 1983, and against respondent Jeffrey Ramirez, an FBI Special Agent, under *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Petitioner alleged that Collett and Ramirez had made false statements that led to his arrest and prosecution. Pet. App. 2a. More specifically, petitioner alleged that respondent Ramirez had testified falsely before the federal grand jury that an illegal bet was placed with another FBI agent during the search of petitioner's home. Based on that allegation, petitioner asserted Fourth Amendment claims for false arrest and malicious prosecution. *Ibid.*

As relevant here, Ramirez and Collett filed motions for summary judgment on their claims of qualified immunity, on the ground that, putting aside any allegedly perjured testimony, the depositions, grand jury testimony, search warrant affidavit, and previous federal court proceedings established probable cause to arrest and prosecute petitioner.

The district court, adopting the findings and recommendation of a magistrate judge, denied summary judgment. Pet. App. 25a; *id.* at 7a-24a. With respect to respondent Ramirez, the court reasoned that there was a genuine factual issue as to the existence of probable cause to arrest and prosecute petitioner because Ramirez's grand jury testimony that a bet was taken during the search of petitioner's home was contradicted by the deposition testimony of an agent who participated in the search. *Id.* at 18a-20a. The court further concluded that, while the respondents argued that "their actions were objectively reasonable under the circumstances," "there are simply too many disputed facts regarding" the respondents' subjective knowledge

of petitioner's bookmaking activities in Texas to permit summary judgment on whether probable cause existed to sustain the arrest and prosecution. *Id.* at 23a.

4. In an unpublished decision, the court of appeals reversed and remanded for the entry of judgment in favor of respondents. Pet. App. 1a-6a. With respect to the allegation of malicious prosecution, the court held that the complaint failed to state a claim because "malicious prosecution standing alone does not violate the United States Constitution." *Id.* at 4a (citing *Castellano* v. *Fragozo*, 352 F.3d 939 (5th Cir. 2003) (en banc), petitions for cert. pending, Nos. 03-1269 & 03-1417 (filed Mar. 2, 2004, and Apr. 8, 2004)). The court next held that petitioner's false arrest claim failed because the evidence known to respondents, excluding the evidence that petitioner alleged to be false, established probable cause as a matter of law. Pet. App. 5a. The court of appeals noted that, in ruling on petitioner's motion to suppress prior to the criminal trial, the district court had found that probable cause existed to believe that petitioner was involved in illegal gambling, without any reference to the allegedly perjured testimony. *Id.* at 6a. In particular, the court cited evidence before the district court of a "letter identifying [petitioner] as [World Sportsbook's] advertising agent," evidence that petitioner "handled bettors' transfers and payoffs," and the agents' discovery of a tally sheet "listing various bets" in petitioner's home, all of which had led the district court to conclude that petitioner's "link to [World Sportsbook's] illegal gambling operation is clear." *Id.* at 6a & n.1.

ARGUMENT

Petitioner asks (Pet. 11) this Court to "use its supervisory powers" to "examine the record in this cause" to

correct the court of appeals' alleged failure properly to "evaluate the probable cause criteria that remained" to support his arrest and prosecution after excluding the allegedly perjured testimony from the record in his case. The court of appeals' resolution of that factbound question was correct and that unpublished disposition does not merit the Court's review.

In reviewing the district court's decision, the court of appeals examined (Pet. App. 4a-5a) whether, excluding the allegedly false testimony, probable cause remained to arrest petitioner. See also *id.* at 4a ("The question presented here is whether, setting aside the allegedly false testimony by the defendants, probable cause existed to believe that [petitioner] committed an offense."). That was the correct legal standard under this Court's precedent. See, *e.g.*, *Anderson* v. *Creighton*, 483 U.S. 635, 663-664 (1987) (probable cause negates liability for false arrest); *Heck* v. *Humphrey*, 512 U.S. 477, 494 (1994) (Souter, Blackmun, Stevens & O'Connor, JJ., concurring in judgment) (plaintiff in malicious prosecution action "must prove the '[a]bsence of probable cause for the proceeding'") (citation omitted); see generally *Franks* v. *Delaware*, 438 U.S. 154 (1978).

The court of appeals also correctly recognized that the probable cause standard is far less demanding than the standard of proof beyond a reasonable doubt required for conviction. Probable cause "means less than evidence which would justify condemnation." *Maryland* v. *Pringle*, 124 S. Ct. 795, 800 (2003) (quoting *Locke* v. *United States*, 11 U.S. (7 Cranch) 339, 348 (1813)). Probable cause exists if a seizure is "made under circumstances which warrant suspicion," and that generate a "reasonable ground for belief of guilt." *Ibid.* (citation and internal quotation marks omitted). Petitioner's record-bound disagreement with the court

of appeals' application of the probable cause standard to the facts of his case does not warrant an exercise of this Court's certiorari jurisdiction.[1]

The court of appeals' finding of probable cause provided an independently sufficient basis to dismiss both petitioner's false arrest and malicious prosecution claims. See *Heck*, *supra*; see also *Albright* v. *Oliver*, 510 U.S. 266, 274 (1994) (where probable cause exists, "the accused is not 'entitled to judicial oversight or review of the decision to prosecute'") (quoting *Gerstein* v. *Pugh*, 420 U.S. 103, 118-119 (1975)). The court of appeals, however, dismissed petitioner's malicious prosecution claim on the ground that a state-law charge of malicious prosecution, without more, does not amount to a violation of the federal Constitution. Pet. App. 3a-4a. Petitioner correctly notes (Pet. 13-14) that the courts of appeals have adopted various formulations for determining when a state-law malicious prosecution claim will amount to a constitutional violation. See *Castellano* v. *Fragozo*, 352 F.3d 939, 949-953 (5th Cir. 2003) (en banc) (discussing the cases), petitions for cert. pending, Nos. 03-1269 & 03-1417 (filed Mar. 2, 2004, and Apr. 8, 2004). But that point has no bearing on petitioner's case. *No* circuit has found a constitutional violation, under either the Fourth or Fifth Amendment, based solely on the use of false evidence, where probable cause for the prosecution exists independently of

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[1] Petitioner's insistence (Pet. 12) that qualified immunity is never appropriate when false testimony "concern[s] a material element" simply reflects his disagreement with this Court's long-standing rule, see *Franks*, *supra*, that the relevance of an allegation of perjury turns upon whether the false evidence materially contributed to the probable cause determination or whether it was surplusage.

the false evidence. The resolution of petitioner's case thus would be the same in any circuit in which it arose.[2]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

PAUL D. CLEMENT
Acting Solicitor General
PETER D. KEISLER
Assistant Attorney General
SCOTT R. MCINTOSH
SUSHMA SONI
Attorneys

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[2] In any event, petitioner's concern (Pet. 12) with what he perceives to be the "clear implication" of the Fifth Circuit's holding in his case and in *Castellano*, *supra*—that "perjured testimony given to a Grand Jury considering an indictment concerning a material element of a crime would not violate the Fourth Amendment"—is unfounded. *Castellano* makes clear that, if the perjured testimony leads to an arrest or detention *without probable cause*, a Fourth Amendment violation occurs. See 352 F.3d at 353 ("The initiation of criminal charges without probable cause may set in force events that run afoul of * * * the Fourth Amendment if the accused is seized and arrested."). The difficulty for petitioner is that, as the court of appeals found (Pet. App. 5a-6a), the government had ample evidence of probable cause to arrest and prosecute him independent of the allegedly false testimony.